

<sup>1</sup> Claimant's counsel has since withdrawn and claimant is proceeding pro se.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant began working for the respondent in 2003 as a home health care provider. She performed daily tasks for her patients including cleaning, cooking, going to the store, doing laundry, taking them to the doctor and in general, whatever they needed.<sup>2</sup> Her hours are kept on a time sheet and they reflect not only the hours worked, but the patient served during that period.

Claimant alleges that on October 17, 2005, she injured her left shoulder while pulling a patient in her wheelchair up a ramp to a nursing facility. The purpose of this trip was to allow the patient to see her ailing mother. But the trip had not gone smoothly. Claimant stated that one of the patient's other caregivers called and asked her to take the patient. Claimant agreed and picked the patient up and took her to the hospital, only to be told that the patient's mother was not there but was elsewhere. After a number of times getting the patient in and out of the car at different facilities, claimant was finally pulling the patient in her wheelchair up a ramp when she felt her left shoulder pop.<sup>3</sup>

Claimant told her employer and was treated for her injuries. Notice and timely written claim are not disputed, at least at this juncture. The gist of respondent's defense is that the time records presented by claimant do not indicate that she was working with this particular patient on October 17, 2005 at the time period when this accident occurred. The records show that claimant worked for this patient for an hour in the morning and then never returned to perform services. Rather, another employee, Deana Kucza, was working with the patient.

According to claimant, Deana called her and asked her to take the patient to see her mother at the hospital. Claimant testified that Deana frequently had car trouble and that must have been the reason Deana couldn't take her on that particular date. So, claimant says after she finished her other patient, she returned to pick up this individual and take her to the hospital. This return visit is not reflected on the time sheets.

Claimant concedes this was something of a favor but she believed it was work-related as it was going to be time consuming.<sup>4</sup> Claimant testified that shifting work responsibilities between workers was permitted and did not require permission. The ALJ made the following inquiries with respect to this point:

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<sup>2</sup> P.H. Trans. at 5.

<sup>3</sup> *Id.* at 8.

<sup>4</sup> *Id.* at 32.

Q. Well, just answer my question. So if you undertook to work for someone without his having told you to, it would be on your own initiative, correct?

A. Well, yes and no. He lets the workers --

Q. Let me ask the questions.

MS. KELSEY: I think she was about to explain.

Q. (BY JUDGE AVERY) Well, I'm going to let her do that. When you say yes, what do you mean by that, yes --

A. Yes, we can go ahead and do on our own initiative, but we can't, like, go get a new client to start working with. That's what I mean. But if one worker is sick and they call you --

Q. They meaning who?

A. Another worker. Another worker that works for Assist. If they say, "I'm sick, could you go work with this client," and I've already worked with them, then I can do that. Just like if Deana calls and said, "Can you take her to see her mom because my car is broke down," I can do that without calling Mitch.

Q. So you were able to switch hours without --

A. Yes.

Q. --without getting permission of your boss?

Q. Right. He don't care as long as she's covered.<sup>5</sup>

The ALJ concluded that while claimant met her burden to establish an injury occurred, he did not find that her accident arose out of and in the course of her employment. It appears that he concluded, based upon the lack of corroborating billing records, that claimant was not within the course of her employment that day and was, instead, simply performing a favor.

The Board has considered this matter and finds that the ALJ's Order should be reversed. Claimant testified that she was allowed to trade shifts with her co-workers and that it was acceptable for one co-worker to call another to perform work. This evidence is uncontroverted and it would appear that, by the barest of margins, claimant has therefore established that her injury occurred while she was performing her work duties. Accordingly, claimant is entitled to the benefits she seeks.

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<sup>5</sup> *Id.* at 40-41.

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Brad E. Avery dated April 6, 2006, is reversed and claimant is entitled to the benefits sought.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of June, 2006.

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BOARD MEMBER

c: Joan Dillingham, Pro Se Claimant  
Andrew Wimmer, Attorney for Respondent and its Insurance Carrier  
Brad E. Avery, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director